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LAW OFFICES

KOTEEN & NAFTALIN, L.L.P.

1150 CONNECTICUT AVENUE

WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
*SENIOR COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

RECEIVED

December 1, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esquire
Office of the Secretary
Portals II Building
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

WT 00-3

Re: Request for Declaratory Ruling -
Compliance with Section 20.6 of the Commission's Rules

Dear Ms. Salas:

On behalf of VoiceStream Wireless Corporation and VoiceStream Wireless Holding Corporation ("VoiceStream Holding"), Aerial Communications, Inc. ("Aerial") and Telephone and Data Systems, Inc. ("TDS"),¹ this is to request a declaratory ruling with respect to their continuing compliance with Section 20.6 of the Commission's rules in a proposed reorganization involving Aerial and VoiceStream Holding as proposed in their applications for transfer of control which are being concurrently filed.

Description of the Transaction

On September 17, 1999, VoiceStream, Aerial, TDS, VoiceStream Holding and VoiceStream Subsidiary III Corporation, entered into an Agreement and Plan of Reorganization, contemplating the business combination of VoiceStream and Aerial through a reorganization whereby the two companies will, after the reorganization, be wholly-owned subsidiaries of VoiceStream Holding.

The combination of VoiceStream and Aerial brings together two major providers of GSM in the United States. When the Aerial reorganization and the Omnipoint reorganization² are

¹ TDS is Aerial's parent company.

² As the Commission is aware, VoiceStream already has applications pending seeking consent to a reorganization involving VoiceStream and Omnipoint Corporation ("Omnipoint"). These applications were listed on public notice as accepted for filing on August

completed, VoiceStream Holding will: (1) own, collectively with joint venture entities, 333 broadband PCS licenses; (2) receive \$1.7 billion in new equity capital from two strategic investors; (3) expand its service coverage significantly, creating a nearly nationwide footprint utilizing a single technology; and (4) become the largest PCS provider using GSM technology in the United States. VoiceStream Holding, together with companies 49% owned by VoiceStream, which are controlled by Cook Inlet Region, Inc. ("CIRI"), will hold licenses to provide service utilizing a single technology to over 200 million people with operating systems from New York to Hawaii, merging two complementary networks to create a single seamless national network capable of competing with AT&T Wireless, Sprint PCS, Nextel Communications and the proposed joint venture between Vodafone AirTouch PLC and Bell Atlantic/GTE. VoiceStream Holding will reap the benefits of increased scale and scope, improve spectrum efficiency, add to industry capacity, and facilitate widespread availability of advanced service packages that consumers are demanding.

Spectrum Cap Analysis

The parties have analyzed the proposed transaction with specific reference to spectrum cap compliance requirements to identify markets where the Commission's 45 MHz and 55 MHz limitations in Section 20.6 of the Commission's rules might be exceeded. The acquisition by VoiceStream Holding of the PCS licenses of Aerial in the Aerial reorganization will cause VoiceStream Holding to hold new attributable interests in this PCS spectrum exceeding spectrum cap limits in markets where it already holds attributable interests in PCS and cellular licensees. There are also circumstances where the consummation of the Aerial reorganization prior to consummation of the Omnipoint reorganization would mean that TDS will hold an attributable equity interest in VoiceStream Holding licenses in markets where TDS already holds attributable interests in non-Aerial cellular licenses causing it to exceed spectrum cap limits at least for a temporary period. Those VoiceStream Holding licenses will not be attributable to TDS if the timing of the closing of the Aerial reorganization is contemporaneous with or postdates the closing of the Omnipoint reorganization. For the reasons described in their transfer of control applications, the parties have requested that interim waivers of Section 20.6(d) of the rules be granted for a period of six months following the later of the Commission's action on the application requesting grant of consent to (i) the Omnipoint reorganization, or (ii) the Aerial reorganization, in each case with respect to their interests as applicable in specific BTA and MTA markets.

The foregoing analysis does not attribute the licenses of United States Cellular Corporation ("U.S. Cellular"), a majority-owned subsidiary of TDS, to VoiceStream Holding or to Western Wireless Corporation ("Western"). Nor does it attribute the licenses of Western to TDS or U.S. Cellular. This analysis also does not attribute the PCS licenses of VoiceStream Holding to TDS and U.S. Cellular in the event the Aerial transaction closes after the Omnipoint transaction (in which

16, 1999. See VoiceStream Wireless Corporation, Omnipoint Corporation et. al, Seek FCC Consent for Transfer of Control and Assignment of Licenses and Authorizations, Public Notice, DA 99-1634, (rel. Aug. 16, 1999).

event TDS would hold less than a 20% equity interest in VoiceStream Holding). Attachment A is a diagram showing the relationships among Aerial, TDS, VoiceStream, VoiceStream Holding, U.S. Cellular and Western.

Scope of Declaratory Ruling

VoiceStream, VoiceStream Holding, TDS and Aerial request a declaratory ruling based on the ownership and other information provided in their transfer of control applications, as supplemented by this letter, confirming pursuant to Section 20.6 of the Commission's rules that VoiceStream Holding will not be deemed to have an attributable interest indirectly through TDS in the licenses of U.S. Cellular, that TDS will not be deemed to have an attributable interest indirectly through VoiceStream Holding in the licenses of Western and that the methodologies used by the parties as described in this letter in determining that the licenses held by certain other entities are non-attributable comply with the Commission's rules and policies. Alternatively, the parties request grant of permanent waivers of Section 20.6 of the Commission's rules in consideration of the public interest benefits described in their transfer of control applications with respect to each of the foregoing interests in the event any of these interests are deemed attributable under Section 20.6 (d) of the Commission's rules.^{3/}

1. Licenses of U.S. Cellular. The parties concluded that attributable interests of TDS should not be attributed to Western, VoiceStream or VoiceStream Holding because the relationship to U.S. Cellular of Western, VoiceStream and VoiceStream Holding does not present significant opportunity for anticompetitive influence. Neither Western, VoiceStream or VoiceStream Holding hold any equity interest in TDS or U.S. Cellular, has any common officers, directors or key management employees with these companies, or is a party to any management, joint marketing or other joint venture arrangements which might be deemed to create attributable interests in them. Consummation of the proposed Aerial reorganization will not create any direct or indirect equity interest of Western, VoiceStream or VoiceStream Holding in TDS or U.S. Cellular, any overlap of officers, directors or key management employees between these companies, or management, marketing or joint venture relationships.

2. Licenses of Western. The spectrum held by Western, a company which has certain common officers and directors with VoiceStream, is attributable to VoiceStream and VoiceStream Holding but is not attributed to TDS and U.S. Cellular in the foregoing spectrum cap analysis.^{4/} Here

³ See Report and Order in WT Dkt. Nos. 98-205 and 96-59 and GN Dkt. No. 93-252, FCC 99-244, released September 22, 1999, ¶¶ 94, 97, 98 and 99-101. ("Spectrum Cap Order")

⁴ VoiceStream has no ability to control Western, nor Western to control VoiceStream. Western and VoiceStream are separately traded public companies, with different ownership, different marketing staffs and different business plans.

as above the relationship of TDS to Western, VoiceStream and VoiceStream Holding does not present significant opportunity for anti-competitive influence. TDS holds no equity interest in Western, has no common officers, directors or key management employees with Western, and is not a party to any management, joint marketing or other joint venture arrangements which might be deemed to create attributable interests in Western under the Commission's spectrum cap rules. Consummation of the proposed reorganization transactions will not create any direct or indirect equity interest of TDS in Western, any overlap of officers, directors or key management employees of TDS and Western, or management, marketing or joint venture relationships between these companies.

3. Licenses of VoiceStream Holding. The parties concluded, as described above, that in the event the Aerial reorganization closes before the Omnipoint reorganization, the licenses of VoiceStream Holding would be attributable to TDS and U.S. Cellular. This occurs because TDS would have a greater than 20 percent equity interest in VoiceStream. Alternatively, if the Omnipoint reorganization were to precede the Aerial reorganization, TDS would have less than a 20 percent equity interest in VoiceStream Holding. The declaratory ruling requested here focuses on the circumstances of this latter contingency where TDS holds less than a 20 percent equity interest in VoiceStream Holding.

TDS will have the right to appoint one director to the seventeen member VoiceStream Holding Board for so long as it holds at least 4,500,000 shares of VoiceStream Holding common stock.^{5/} TDS' exercise of this right should not create an attributable interest of TDS in VoiceStream Holding.

TDS and the other stockholders have agreed that the director which they will elect as designated by TDS cannot be an officer, director, management level employee or affiliate of TDS or of any person in which TDS or an affiliate of TDS has an "attributable interest" as defined in the Commission's rules.^{6/} VoiceStream Holding also retains the right reasonably to withhold approval of any proposed appointee to its Board, providing an additional means to protect against the creation of attributable interests which might violate the Commission's spectrum cap rules.^{7/}

The director to be appointed by TDS will have a fiduciary relationship with and will be

⁵ In the event that at any time TDS owns more than 9,800,000 shares of VoiceStream Holding common stock and Sonera owns less than 4,500,000 shares of VoiceStream Holding common stock, TDS will have the right to designate two directors to the VoiceStream Holding Board.

⁶ Parent Stockholder Agreement, Section 2(b) and definition of "Qualified Designee."

⁷ Parent Stockholder Agreement, definition of "Qualified Designee."

required to act under a duty of loyalty in the interest of VoiceStream Holding and all of its shareholders.^{8/} The duty of loyalty requires a director not personally to benefit himself at the expense of the corporation and its stockholders and therefore, such a director has no conflicting duty of loyalty to TDS.^{9/}

TDS also confirms that it will take appropriate steps to prevent the receipt by any official or employee of TDS of any inappropriate non-public information about VoiceStream Holding from the director of VoiceStream Holding appointed by TDS and to prevent any official or employee of TDS from providing to such director any information intended significantly to influence the nature or types of services offered by VoiceStream Holding, the terms upon which such services are offered, or the prices charged for such services in service areas where the operations of VoiceStream Holding and the cellular subsidiary of TDS overlap.

In addition, all directors of VoiceStream Holding are subject to fiduciary duties to keep confidential the deliberations of the VoiceStream Holding Board and information about VoiceStream Holding except as has been authorized by the full board. Directors have a common law duty not to mismanage corporate assets, of which confidentiality is one.^{10/} Here, as above, the director appointed by TDS has no conflicting fiduciary duty to disclose non-public information to TDS. Failure to abide by these duties of confidentiality is potentially a breach of fiduciary duties to VoiceStream Holding and all its shareholders and a violation of law.^{11/} Here, as in each of the other circumstances described herein, the parties concluded this relationship between TDS and VoiceStream Holding does not present significant opportunity for anticompetitive influence.^{12/}

4. Licenses of CIRI/VoiceStream Joint Venture. VoiceStream is a limited partner in a designated entity licensee controlled by CIRI. The ownership of this licensee is 50.1 percent by CIRI and 49.9 percent by VoiceStream. VoiceStream has no common officers, directors or key management employees with CIRI and is not a party to any joint management or joint marketing arrangements with CIRI. Under Section 20.6(d)(8) of the Commission's rules, the calculation to

⁸ See generally, The Corporate Director's Guidebook, published by the ABA, 33 Bus. Law. 1595 (1978).

⁹ Id.

¹⁰ SEC v. Dirks, 463 U.S. 646, 653 n.10 (1983).

¹¹ Id.

¹² One director of TDS who is also an officer of a wholly-owned subsidiary of Sonera will resign from the TDS Board concurrently with the closing of the Aerial reorganization. This is intended to remove possible concerns about an attributable relationship between TDS and VoiceStream Holding through Sonera resulting from the right of Sonera to appoint a director to the VoiceStream Holding Board.

determine whether the equity threshold in Section 20.6(d)(2) of the rules has been exceeded by TDS is subject to a multiplier. In this case, the resulting non-attributable equity interest of TDS is less than 20 percent even in the event the closing of the Aerial reorganization were to precede the closing of the Omnipoint reorganization.^{13/}

5. Licenses of Iowa Wireless Network Services Holding Company. VoiceStream has a noncontrolling 38 percent equity interest in Iowa Wireless Network Services Holding Company ("Iowa"), no common officers, directors or key management employees with Iowa and no management or joint marketing arrangements with Iowa. Under the multiplier provisions of Section 20.6 (d) (8) of the Commission's rules, this means that TDS holds a non-attributable equity interest amounting to less than 20 percent of Iowa even if the closing of the Aerial reorganization were to precede the closing of the Omnipoint reorganization.^{14/}

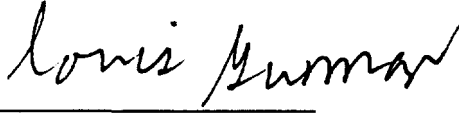
6. Licenses of Rural Cellular Corporation. In the Aerial reorganization VoiceStream Holding will acquire the 49.9 percent equity interest held by Aerial in Wireless Alliance LLC, a PCS licensee holding partitioned and disaggregated spectrum rights to serve portions of Minnesota, North Dakota, South Dakota and Wisconsin. The remaining 50.1 percent controlling interest is held by Rural Cellular Corporation ("RCC"), a publicly traded company which holds cellular and other licenses. VoiceStream Holding has no equity interest in RCC, has no common officers, directors or key management personnel or management or joint marketing relationship with RCC apart from its participation in Wireless Alliance. Here as above, the parties submit that the relationship between VoiceStream Holding and RCC does not present a significant opportunity for anticompetitive influences so that the spectrum holdings of RCC (other than Wireless Alliance LLC) should not be attributed to VoiceStream, VoiceStream Holding and Western.

In conclusion the parties have diligently attempted to identify each of the types of attributable relationships potentially involved in a transaction of the scale of the Aerial reorganization. Relationships created through joint ventures, common officers and directors and other companies under common control have been examined closely under the standards articulated in Section 20.6 of the Commission's rules and the Commission's recent Spectrum Cap Order. Based on their review of those standards and discussions with Commission staff members, the parties submit that the interests outlined here reasonably are not attributable in the circumstances described here. In its Spectrum Cap Order, the Commission provided for the case-by-case review of specific relationships as requested here. For the reasons presented above, the public interest would be served by grant of this declaratory ruling request or, alternatively, grant of appropriate waivers.

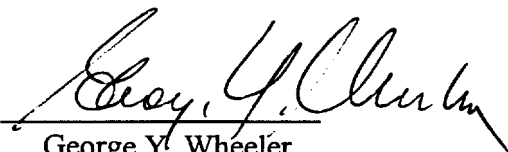
¹³ Multiplier calculation...24 percent (TDS-pre-Omnipoint) times 49.9 percent (VoiceStream)...resulting in an approximately 12 percent interest.

¹⁴ Multiplier calculation...24 percent (TDS-pre-Omnipoint) times 38 percent (VoiceStream Holding)...resulting in an approximately 9 percent interest.

Very truly yours,

By 
Louis Gurman

Gurman, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W. Suite 500
Washington, DC 20036
Counsel for VoiceStream Corporation and
VoiceStream Holding Corporation

By 
George Y. Wheeler

Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W. Suite 1000
Washington, DC 20036
Counsel for Aerial Communications, Inc. and
Telephone and Data Systems, Inc.

cc(by hand delivery):

Thomas Sugrue
James D. Schlichting
Lauren Kravetz
David Krech
Pieter Van Leeuwen

AERIAL MERGER PRE-OMNIPPOINT

